

AMENDMENT NUMBER ONE
TO AN AGREEMENT
BETWEEN THE CITY OF FRISCO, TEXAS (CITY)
AND
JANICE HART MELITO
FOR

THE FABRICATION AND INSTALLATION OF THE PROPOSED
FETCHING WATER
(PRESTON ROAD, PHASE 2 PROJECT) (PROJECT)

Made as of the 3 day of APRIL in the year Two Thousand Nine:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 731-4945

and the Artist: Janice Hart Melito
dba Montage Imagers, inc.
3221 Lawnwood Street
Fort Worth, TX 76111
Telephone: (817) 332-5759
Facsimile: (817) 332-5750

for the following Project: Fabrication and Installation of the proposed "Fetching Water"
for Preston Road, Phase 2

The City and Artist agree as set forth below:

THIS AMENDMENT NUMBER ONE is made and entered by and between the City of Frisco, Texas, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and Janice Hart Melito dba Montage Imagers, inc. hereinafter referred to as "Artist," to be effective from and after the date as provided herein the "Amendment Number One."

WHEREAS, the City and Artist entered into that certain Agreement for professional artist services to fabricate and install the proposed "Fetching Water" submitted for the Preston Road, Phase 2 public art competition in May, 2005, hereinafter referred to as "Project;" and

WHEREAS, the City and Artist desire to amend the Agreement for the purpose of adjusting the Scope of Services (defined in the Agreement) to require the Artist to install "Fetching Water" temporarily at the George A. Purefoy Municipal Complex and to amend Exhibit "A" Project Description and Exhibit "B" Completion Schedule; and

WHEREAS, the City and Artist desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Artist do mutually agree as follows:

1. **Installation.** City and Artist agree that this Amendment Number One amends the Agreement for the purpose of changing the location of installation to be performed by Artist, as more particularly described in the following exhibits, attached hereto and incorporated herein for all purposes:
 - a. Exhibit "A," Scope of Amended Services, dated December 14th, 2007.
 - b. Exhibit "B," Amended Completion Schedule/Project Billing/Project Budget, dated December 14th, 2007.
2. **Complete Agreement.** This Amendment Number One, including the exhibits attached hereto labeled "A" through "B," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "A-B" are attached hereto and made a part of the Agreement and this Amendment Number One.
3. **Counterparts.** This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.
4. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.

5. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.
6. **Authority to Execute.** The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.
7. **Entire Agreement / Amendment Number One.** This Amendment Number One, and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or arrangements between the parties regarding the subject matter hereof.
8. **Venue.** The Agreement and Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
9. **Assignment.** This Amendment Number One may not be assigned except as authorized in the Agreement.

IN WITNESS HEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

CITY

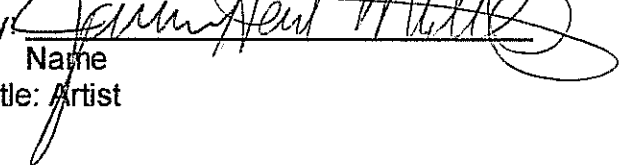
The City of Frisco, Texas

By: _____
George Purefoy
Title: City Manager

APPROVED AS TO FORM:

Abernathy, Roeder, Boyd and Joplin, P.C.

ARTIST

By: 
Name
Title: Artist

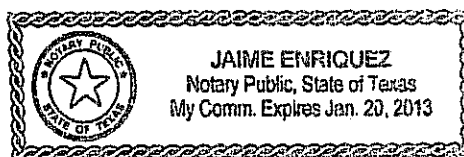
STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 3rd DAY OF April, 2009.

Jaime E.
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 01-20-2013

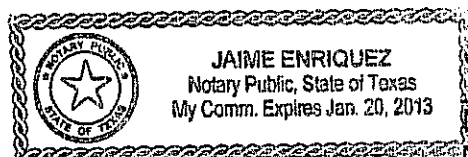


STATE OF TEXAS:

COUNTY OF Tarrant:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED Janice Melito, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 3rd DAY OF April, 2009.



Jaime E.
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 01-20-2013

EXHIBIT "A"
SCOPE OF AMENDED SERVICES, DATED

4/3/2009

**Amendment Number One to Agreement by and between
the City of Frisco, Texas (City) and Janice Hart Melito dba Montage Imagers inc.
for the fabrication and temporary installation at the George A. Purefoy Municipal
Center of the proposed "Fetching Water" for the (Preston Road, Phase 2 Project)
(Project)**

Project Description

"... "Fetching Water" is a 7' human scale bronze sculpture depicting a winsome young woman drawing water for dinner. The piece honors the contribution and hard, difficult work done by women on the frontier. This is a romantic storytelling, depicting a heroic action and image of a Frontierswoman (circa 1900 - 1920) at work allowing the viewer to be in the presence of, and moved and inspired by, the possibility of being human.

To fabricate and temporarily install at the George A. Purefoy Municipal Center the proposed "Fetching Water" for the Preston Road, Phase 2 project, artist Janice Hart Melito will perform the following tasks:

A) Following a site visit, submit final schematic drawings of the proposal, based upon submitted maquette to City staff and the Public Art Board for their review and approval within 60 days of the receipt of this agreement. These drawings will include:

- Detailed information of every physical feature of the construction of the Artwork and its integration with the site with any proposed changes to the previously submitted concept highlighted. (Final Design).
- A description of any issues involved in the construction, integration and maintenance of the Artwork, as well as any third party subcontractors needed to work on the project.
- A final project budget breakdown not to exceed \$82,000.00.
- An installation timeline.

B) Following formal approval of the Public Art Board, the Artist shall submit drawings stamped by an engineer, licensed by the State of Texas and paid for by the Artist, for certification that the Artwork, foundation, and its connection will be structurally sound.

C) The Artist shall fabricate and temporarily install the Artwork in substantial conformity with the approved design. Any significant changes in the concept, as defined in Article 5.2, must be approved by the City. It is the responsibility of the Artist to coordinate with the City, the Project Landscape Architect, and Contractor to ensure that the temporary site is prepared to receive the Artwork. The City will be responsible for preparation of the temporary site, including installation of the foundation and lighting.

D) Upon completion of the temporary installation at the George A. Purefoy Municipal Center and clean-up of the temporary site, the City project manager will inspect the work and give notice of acceptance, as provided in this Agreement. The Artist will complete the City's maintenance worksheet and submit it to the City within ten (10) days of City's final acceptance of the Artwork."

EXHIBIT "A"
SCOPE OF AMENDED SERVICES, DATED

4/3/2009

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET
FOR AMENDED SERVICES, DATED 4/3/2009

**Amendment Number One to Agreement by and between
the City of Frisco, Texas (City) and Janice Hart Melito dba Montage Imagers inc.
to fabricate and install the proposed "Fetching Water" submitted for the
(Preston Road, Phase 2 Project)(Project)**

COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

I. Completion Schedule and Project Billing

TASK	DESCRIPTION	PAYMENT	TIMELINE
1	Execution of Agreement and Notice to Proceed. Insurance documentation sent to City.	17,425.00	January, 2008
2	Submit final design and budget breakdown for approval to City Staff and Public Art Board.	17,425.00	January, 2008
3	50% Complete with Full Scale Clay original (Massing), Stamped engineered drawings submitted.	17,425.00	April, 2008
4	Review and City approval of Full-scale clay original sculpture, prior to mold-making	17,425.00	August, 2008
5	Final acceptance by project manager, temporary installation at the George A. Purefoy Municipal Center, submit maintenance worksheets.	\$12,300.00	May, 2009
TOTAL		\$82,000.00	